

AMENDED IN SENATE AUGUST 10, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1895

Introduced by Assembly Member Ackerman

February 10, 2000

An act to amend Sections 158, 202, 301.5, 305, 306, 503, 602, 603, ~~2115~~, 5220, 5512, 7220, 7512, 9220, 9412, 12360, 12462, 25014.7, 25100, 25101, ~~25102~~, and 25117 of, and to add Section 163.1 to, the Corporations Code, *and to amend Section 11521.2 of the Insurance Code*, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1895, as amended, Ackerman. Corporations.

Existing law sets forth organizational procedures and filing requirements for corporations. Existing law also regulates the ownership and sale of, and investment in, securities registered on a national securities exchange, as provided by federal law.

This bill would make various changes relating to corporations and securities, including the following:

(1) Adds a definition of “cumulative dividends in arrears” for shareholder distributions.

(2) Revises the provision regarding professional corporations.

(3) Changes a reference to securities listed on the National Market System of the NASDAQ Stock Market in various provisions of law.

(4) Specifies the conditions regarding election of a director to fill a vacancy not created by removal of a director.

(5) Authorizes a superior court to appoint directors of various types of nonprofit corporations if the corporation has no shareholders or initial directors have not been named and all of the directors die, resign, or become incompetent.

(7)

(6) Specifies the conditions of a board's approval of business items if members leave before a vote.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 158 of the Corporations Code is
2 amended to read:

3 158. (a) "Close corporation" means a corporation
4 whose articles contain, in addition to the provisions
5 required by Section 202, a provision that all of the
6 corporation's issued shares of all classes shall be held of
7 record by not more than a specified number of persons,
8 not exceeding 35, and a statement "This corporation is a
9 close corporation."

10 (b) The special provisions referred to in subdivision
11 (a) may be included in the articles by amendment, but
12 if such amendment is adopted after the issuance of shares
13 only by the affirmative vote of all of the issued and
14 outstanding shares of all classes.

15 (c) The special provisions referred to in subdivision
16 (a) may be deleted from the articles by amendment, or
17 the number of shareholders specified may be changed by
18 amendment, but if such amendment is adopted after the
19 issuance of shares only by the affirmative vote of at least
20 two-thirds of each class of the outstanding shares;
21 provided, however, that the articles may provide for a
22 lesser vote, but not less than a majority of the outstanding
23 shares, or may deny a vote to any class, or both.

24 (d) In determining the number of shareholders for the
25 purposes of the provision in the articles authorized by this
26 section, a husband and wife and the personal
27 representative of either shall be counted as one
28 regardless of how shares may be held by either or both of



1 them, a trust or personal representative of a decedent
2 holding shares shall be counted as one regardless of the
3 number of trustees or beneficiaries and a partnership or
4 corporation or business association holding shares shall be
5 counted as one (except that any such trust or entity the
6 primary purpose of which was the acquisition or voting
7 of the shares shall be counted according to the number of
8 beneficial interests therein).

9 (e) A corporation shall cease to be a close corporation
10 upon the filing of an amendment to its articles pursuant
11 to subdivision (c) or if it shall have more than the
12 maximum number of holders of record of its shares
13 specified in its articles as a result of an inter vivos transfer
14 of shares which is not void under subdivision (d) of
15 Section 418, the transfer of shares on distribution by will
16 or pursuant to the laws of descent and distribution, the
17 dissolution of a partnership or corporation or business
18 association or the termination of a trust which holds
19 shares, by court decree upon dissolution of a marriage or
20 otherwise by operation of law. Promptly upon acquiring
21 more than the specified number of holders of record of its
22 shares, a close corporation shall execute and file an
23 amendment to its articles deleting the special provisions
24 referred to in subdivision (a) and deleting any other
25 provisions not permissible for a corporation which is not
26 a close corporation, which amendment shall be promptly
27 approved and filed by the board and need not be
28 approved by the outstanding shares.

29 (f) Nothing contained in this section shall invalidate
30 any agreement among the shareholders to vote for the
31 deletion from the articles of the special provisions
32 referred to in subdivision (a) upon the lapse of a specified
33 period of time or upon the occurrence of a certain event
34 or condition or otherwise.

35 (g) The following sections contain specific references
36 to close corporations: 186, 202, 204, 300, 418, 421, 1111,
37 1201, 1800 and 1904.

38 SEC. 2. Section 163.1 is added to the Corporations
39 Code, to read:

1 163.1. For purposes of Section 503, “cumulative
2 dividends in arrears” means only cumulative dividends
3 that have not been paid as required on a scheduled
4 payment date set forth in, or determined pursuant to, the
5 articles of incorporation, regardless of whether those
6 dividends had been declared prior to that scheduled
7 payment date.

8 SEC. 3. Section 202 of the Corporations Code is
9 amended to read:

10 202. The articles of incorporation shall set forth:

11 (a) The name of the corporation; provided, however,
12 that in order for the corporation to be subject to the
13 provisions of this division applicable to a close corporation
14 (Section 158), the name of the corporation must contain
15 the word “corporation”, “incorporated” or “limited” or
16 an abbreviation of one of such words.

17 (b) (1) The applicable one of the following
18 statements:

19 (i) The purpose of the corporation is to engage in any
20 lawful act or activity for which a corporation may be
21 organized under the General Corporation Law of
22 California other than the banking business, the trust
23 company business or the practice of a profession
24 permitted to be incorporated by the California
25 Corporations Code; or

26 (ii) The purpose of the corporation is to engage in the
27 profession of _____ (with the insertion of a profession
28 permitted to be incorporated by the California
29 Corporations Code) and any other lawful activities
30 (other than the banking or trust company business) not
31 prohibited to a corporation engaging in such profession
32 by applicable laws and regulations.

33 (2) In case the corporation is a corporation subject to
34 the Banking Law, the articles shall set forth a statement
35 of purpose which is prescribed in the applicable provision
36 of the Banking Law.

37 (3) In case the corporation is a corporation subject to
38 the Insurance Code as an insurer, the articles shall
39 additionally state that the business of the corporation is to
40 be an insurer.

1 (4) If the corporation is intended to be a “professional
2 corporation” within the meaning of the Moscone-Knox
3 Professional Corporation Act (Part 4 (commencing with
4 Section 13400) of Division 3), the articles shall
5 additionally contain the statement required by Section
6 13404.

7 The articles shall not set forth any further or additional
8 statement with respect to the purposes or powers of the
9 corporation, except by way of limitation or except as
10 expressly required by any law of this state other than this
11 division or any federal or other statute or regulation
12 (including the Internal Revenue Code and regulations
13 thereunder as a condition of acquiring or maintaining a
14 particular status for tax purposes).

15 (c) The name and address in this state of the
16 corporation’s initial agent for service of process in
17 accordance with subdivision (b) of Section 1502.

18 (d) If the corporation is authorized to issue only one
19 class of shares, the total number of shares which the
20 corporation is authorized to issue.

21 (e) If the corporation is authorized to issue more than
22 one class of shares, or if any class of shares is to have two
23 or more series:

24 (1) The total number of shares of each class the
25 corporation is authorized to issue, and the total number
26 of shares of each series which the corporation is
27 authorized to issue or that the board is authorized to fix
28 the number of shares of any such series;

29 (2) The designation of each class, and the designation
30 of each series or that the board may determine the
31 designation of any such series; and

32 (3) The rights, preferences, privileges and restrictions
33 granted to or imposed upon the respective classes or
34 series of shares or the holders thereof, or that the board,
35 within any limits and restrictions stated, may determine
36 or alter the rights, preferences, privileges and restrictions
37 granted to or imposed upon any wholly unissued class of
38 shares or any wholly unissued series of any class of shares.
39 As to any series the number of shares of which is
40 authorized to be fixed by the board, the articles may also

1 authorize the board, within the limits and restrictions
2 stated therein or stated in any resolution or resolutions of
3 the board originally fixing the number of shares
4 constituting any series, to increase or decrease (but not
5 below the number of shares of such series then
6 outstanding) the number of shares of any such series
7 subsequent to the issue of shares of that series. In case the
8 number of shares of any series shall be so decreased, the
9 shares constituting such decrease shall resume the status
10 which they had prior to the adoption of the resolution
11 originally fixing the number of shares of such series.

12 SEC. 4. Section 301.5 of the Corporations Code is
13 amended to read:

14 301.5. (a) A listed corporation may, by amendment
15 of its articles or bylaws, adopt provisions to divide the
16 board of directors into two or three classes to serve for
17 terms of two or three years respectively, or to eliminate
18 cumulative voting, or both. After the issuance of shares,
19 a corporation which is not a listed corporation may, by
20 amendment of its articles or bylaws, adopt provisions to
21 be effective when the corporation becomes a listed
22 corporation to divide the board of directors into two or
23 three classes to serve for terms of two or three years
24 respectively, or to eliminate cumulative voting, or both.
25 An article or bylaw amendment providing for division of
26 the board of directors into classes, or any change in the
27 number of classes, or the elimination of cumulative voting
28 may only be adopted by the approval of the board and the
29 outstanding shares (Section 152) voting as a single class,
30 notwithstanding Section 903.

31 (b) If the board of directors is divided into two classes
32 pursuant to subdivision (a), the authorized number of
33 directors shall be no less than six and one-half of the
34 directors or as close an approximation as possible shall be
35 elected at each annual meeting of shareholders. If the
36 board of directors is divided into three classes, the
37 authorized number of directors shall be no less than nine
38 and one-third of the directors or as close an
39 approximation as possible shall be elected at each annual
40 meeting of shareholders. Directors of a listed corporation

1 may be elected by classes at a meeting of shareholders at
2 which an amendment to the articles or bylaws described
3 in subdivision (a) is approved, but the extended terms for
4 directors are contingent on that approval, and in the case
5 of an amendment to the articles, the filing of any
6 necessary amendment to the articles pursuant to Section
7 905 or 910.

8 (c) If directors for more than one class are to be
9 elected by the shareholders at any one meeting of
10 shareholders and the election is by cumulative voting
11 pursuant to Section 708, votes may be cumulated only for
12 directors to be elected within each class.

13 (d) For purposes of this section, a “listed corporation”
14 means any of the following:

15 (1) A corporation with outstanding shares listed on the
16 New York Stock Exchange or the American Stock
17 Exchange.

18 (2) A corporation with outstanding securities listed on
19 the National Market System of the Nasdaq Stock Market
20 (or any successor to that entity).

21 (e) Subject to subdivision (h), if a listed corporation
22 having a board of directors divided into classes pursuant
23 to subdivision (a) ceases to be a listed corporation for any
24 reason, unless the articles of incorporation or bylaws of
25 the corporation provide for the elimination of classes of
26 directors at an earlier date or dates, the board of directors
27 of the corporation shall cease to be divided into classes as
28 to each class of directors on the date of the expiration of
29 the term of the directors in that class and the term of each
30 director serving at the time the corporation ceases to be
31 a listed corporation (and the term of each director
32 elected to fill a vacancy resulting from the death,
33 resignation, or removal of any of those directors) shall
34 continue until its expiration as if the corporation had not
35 ceased to be a listed corporation.

36 (f) Subject to subdivision (h), if a listed corporation
37 having a provision in its articles or bylaws eliminating
38 cumulative voting pursuant to subdivision (a) or
39 permitting noncumulative voting in the election of
40 directors pursuant to that subdivision, or both, ceases to

1 be a listed corporation for any reason, the shareholders
2 shall be entitled to cumulate their votes pursuant to
3 Section 708 at any election of directors occurring while
4 the corporation is not a listed corporation
5 notwithstanding that provision in its articles of
6 incorporation or bylaws.

7 (g) Subject to subdivision (i), if a corporation that is
8 not a listed corporation adopts amendments to its articles
9 of incorporation or bylaws to divide its board of directors
10 into classes or to eliminate cumulative voting, or both,
11 pursuant to subdivision (a) and then becomes a listed
12 corporation, unless the articles of incorporation or bylaws
13 provide for those provisions to become effective at some
14 other time and, in cases where classes of directors are
15 provided for, identify the directors who, or the
16 directorships that, are to be in each class or the method
17 by which those directors or directorships are to be
18 identified, the provisions shall become effective for the
19 next election of directors after the corporation becomes
20 a listed corporation at which all directors are to be
21 elected.

22 (h) If a corporation ceases to be a listed corporation on
23 or after the record date for a meeting of shareholders and
24 prior to the conclusion of the meeting, including the
25 conclusion of the meeting after an adjournment or
26 postponement that does not require or result in the
27 setting of a new record date, then, solely for purposes of
28 subdivisions (e) and (f), the corporation shall not be
29 deemed to have ceased to be a listed corporation until the
30 conclusion of the meeting of shareholders.

31 (i) If a corporation becomes a listed corporation on or
32 after the record date for a meeting of shareholders and
33 prior to the conclusion of the meeting, including the
34 conclusion of the meeting after an adjournment or
35 postponement that does not require or result in the
36 setting of a new record date, then, solely for purposes of
37 subdivision (g), the corporation shall not be deemed to
38 have become a listed corporation until the conclusion of
39 the meeting of shareholders.



1 (j) If an article amendment referred to in subdivision
2 (a) is adopted by a listed corporation, the certificate of
3 amendment shall include a statement of the facts showing
4 that the corporation is a listed corporation within the
5 meaning of subdivision (d). If an article or bylaw
6 amendment referred to in subdivision (a) is adopted by
7 a corporation which is not a listed corporation, the
8 provision, as adopted, shall include the following
9 statement or the substantial equivalent: "This provision
10 shall become effective only when the corporation
11 becomes a listed corporation within the meaning of
12 Section 301.5 of the Corporations Code."

13 SEC. 5. Section 305 of the Corporations Code is
14 amended to read:

15 305. (a) Unless otherwise provided in the articles or
16 bylaws and except for a vacancy created by the removal
17 of a director, vacancies on the board may be filled by
18 approval of the board (Section 151) or, if the number of
19 directors then in office is less than a quorum, by (1) the
20 unanimous written consent of the directors then in office,
21 (2) the affirmative vote of a majority of the directors then
22 in office at a meeting held pursuant to notice or waivers
23 of notice complying with Section 307 or (3) a sole
24 remaining director. Unless the articles or a bylaw adopted
25 by the shareholders provide that the board may fill
26 vacancies occurring in the board by reason of the removal
27 of directors, such vacancies may be filled only by approval
28 of the shareholders (Section 153).

29 (b) The shareholders may elect a director at any time
30 to fill any vacancy not filled by the directors. Any such
31 election by written consent other than to fill a vacancy
32 created by removal, which requires the unanimous
33 consent of all shares entitled to vote for the election of
34 directors, requires the consent of a majority of the
35 outstanding shares entitled to vote.

36 (c) If, after the filling of any vacancy by the directors,
37 the directors then in office who have been elected by the
38 shareholders shall constitute less than a majority of the
39 directors then in office, then both of the following shall be
40 applicable:

1 (1) Any holder or holders of an aggregate of 5 percent
2 or more of the total number of shares at the time
3 outstanding having the right to vote for those directors
4 may call a special meeting of shareholders, or

5 (2) The superior court of the proper county shall, upon
6 application of such shareholder or shareholders,
7 summarily order a special meeting of shareholders, to be
8 held to elect the entire board. The term of office of any
9 director shall terminate upon that election of a successor.

10 The hearing on any application filed pursuant to this
11 subdivision shall be held on not less than 10 business days
12 notice to the corporation. If the corporation intends to
13 oppose the application, it shall file with the court a notice
14 of opposition not later than five business days prior to the
15 date set for the hearing. The application and any notice
16 of opposition shall be supported by appropriate affidavits
17 and the court's determination shall be made on the basis
18 of the papers in the record; but, for good cause shown, the
19 court may receive and consider at the hearing additional
20 evidence, oral or documentary, and additional points and
21 authorities. The hearing shall take precedence over all
22 other matters not of a similar nature pending on the date
23 set for the hearing.

24 (d) Any director may resign effective upon giving
25 written notice to the chairman of the board, the
26 president, the secretary or the board of directors of the
27 corporation, unless the notice specifies a later time for the
28 effectiveness of such resignation. If the resignation is
29 effective at a future time, a successor may be elected to
30 take office when the resignation becomes effective.

31 SEC. 6. Section 306 of the Corporations Code is
32 amended to read:

33 306. If (a) a corporation has not issued shares and all
34 the directors resign, die, or become incompetent, or (b)
35 a corporation's initial directors have not been named in
36 the articles, and all the incorporators resign, die, or
37 become incompetent prior to the election of the initial
38 directors, the superior court of any county may appoint
39 directors of the corporation upon application by any
40 party in interest.

1 SEC. 7. Section 503 of the Corporations Code is
2 amended to read:

3 503. Neither a corporation nor any of its subsidiaries
4 shall make any distribution to the corporation's
5 shareholders (Section 166) on any shares of its stock of any
6 class or series that are junior to outstanding shares of any
7 other class or series with respect to payment of dividends,
8 and as to which senior class or series the corporation has
9 cumulative dividends in arrears, unless the amount of the
10 retained earnings of the corporation immediately prior
11 thereto equals or exceeds the amount of the proposed
12 distribution plus the aggregate amount of the cumulative
13 dividends in arrears on all shares having a preference
14 with respect to payment of dividends over the class or
15 series to which the distribution is made; provided,
16 however, that for the purpose of applying this section to
17 a distribution by a corporation of cash or property in
18 payment by the corporation in connection with the
19 purchase of its shares, there shall be added to retained
20 earnings all amounts that had been previously deducted
21 therefrom with respect to obligations incurred in
22 connection with the corporation's repurchase of its shares
23 and reflected on the corporation's balance sheet, but not
24 in excess of the principal of the obligations that remain
25 unpaid immediately prior to the distribution; provided,
26 further, that no addition to retained earnings shall occur
27 on account of any obligation that is a distribution to the
28 corporation's shareholders (Section 166) at the time the
29 obligation is incurred.

30 SEC. 8. Section 602 of the Corporations Code is
31 amended to read:

32 602. (a) Unless otherwise provided in the articles, a
33 majority of the shares entitled to vote, represented in
34 person or by proxy, shall constitute a quorum at a meeting
35 of the shareholders, but in no event shall a quorum consist
36 of less than one-third (or, in the case of a mutual water
37 company, 20 percent) of the shares entitled to vote at the
38 meeting or, except in the case of a close corporation, of
39 more than a majority of the shares entitled to vote at the
40 meeting. Except as provided in subdivision (b), the

1 affirmative vote of a majority of the shares represented
2 and voting at a duly held meeting at which a quorum is
3 present (which shares voting affirmatively also constitute
4 at least a majority of the required quorum) shall be the
5 act of the shareholders, unless the vote of a greater
6 number or voting by classes is required by this division or
7 the articles.

8 (b) The shareholders present at a duly called or held
9 meeting at which a quorum is present may continue to
10 transact business until adjournment notwithstanding the
11 withdrawal of enough shareholders to leave less than a
12 quorum, if any action taken (other than adjournment) is
13 approved by at least a majority of the shares required to
14 constitute a quorum or, if required by this division or the
15 articles, the vote of a greater number or voting by classes.

16 (c) In the absence of a quorum, any meeting of
17 shareholders may be adjourned from time to time by the
18 vote of a majority of the shares represented either in
19 person or by proxy, but no other business may be
20 transacted, except as provided in subdivision (b).

21 SEC. 9. Section 603 of the Corporations Code is
22 amended to read:

23 603. (a) Unless otherwise provided in the articles,
24 any action which may be taken at any annual or special
25 meeting of shareholders may be taken without a meeting
26 and without prior notice, if a consent in writing, setting
27 forth the action so taken, shall be signed by the holders of
28 outstanding shares having not less than the minimum
29 number of votes that would be necessary to authorize or
30 take such action at a meeting at which all shares entitled
31 to vote thereon were present and voted.

32 (b) Unless the consents of all shareholders entitled to
33 vote have been solicited in writing,

34 (1) Notice of any shareholder approval pursuant to
35 Section 310, 317, 1201 or 2007 without a meeting by less
36 than unanimous written consent shall be given at least
37 10 days before the consummation of the action
38 authorized by such approval, and

39 (2) Prompt notice shall be given of the taking of any
40 other corporate action approved by shareholders

1 without a meeting by less than unanimous written
2 consent,

3 to those shareholders entitled to vote who have not
4 consented in writing. Subdivision (b) of Section 601
5 applies to such notice.

6 (c) Any shareholder giving a written consent, or the
7 shareholder's proxyholders, or a transferee of the shares
8 or a personal representative of the shareholder or their
9 respective proxyholders, may revoke the consent by a
10 writing received by the corporation prior to the time that
11 written consents of the number of shares required to
12 authorize the proposed action have been filed with the
13 secretary of the corporation, but may not do so thereafter.
14 Such revocation is effective upon its receipt by the
15 secretary of the corporation.

16 (d) Notwithstanding subdivision (a), directors may
17 not be elected by written consent except by unanimous
18 written consent of all shares entitled to vote for the
19 election of directors; provided that the shareholders may
20 elect a director to fill a vacancy, other than a vacancy
21 created by removal, by the written consent of a majority
22 of the outstanding shares entitled to vote.

23 ~~SEC. 10. Section 2115 of the Corporations Code is~~
24 ~~amended to read:~~

25 ~~2115. (a) A foreign corporation (other than a foreign~~
26 ~~association or foreign nonprofit corporation but including~~
27 ~~a foreign parent corporation even though it does not itself~~
28 ~~transact intrastate business) is subject to the~~
29 ~~requirements of subdivision (b) if the average of the~~
30 ~~property factor, the payroll factor, and the sales factor (as~~
31 ~~defined in Sections 25129, 25132, and 25134 of the~~
32 ~~Revenue and Taxation Code) with respect to it is more~~
33 ~~than 50 percent during its latest full income year and if~~
34 ~~more than one-half of its outstanding voting securities are~~
35 ~~held of record by persons having addresses in this state.~~
36 ~~The property factor, payroll factor, and sales factor shall~~
37 ~~be those used in computing the portion of its income~~
38 ~~allocable to this state in its franchise tax return or, with~~
39 ~~respect to corporations the allocation of whose income is~~
40 ~~governed by special formulas or that are not required to~~

1 ~~file separate or any tax returns, which would have been~~
2 ~~so used if they were governed by this three factor~~
3 ~~formula. The determination of these factors with respect~~
4 ~~to any parent corporation shall be made on a consolidated~~
5 ~~basis, including in a unitary computation (after~~
6 ~~elimination of intercompany transactions) the property,~~
7 ~~payroll, and sales of the parent and all of its subsidiaries~~
8 ~~in which it owns directly or indirectly more than 50~~
9 ~~percent of the outstanding shares entitled to vote for the~~
10 ~~election of directors, but deducting a percentage of the~~
11 ~~property, payroll, and sales of any subsidiary equal to the~~
12 ~~percentage minority ownership, if any, in the subsidiary.~~
13 ~~For the purpose of this subdivision, any securities held to~~
14 ~~the knowledge of the issuer in the names of~~
15 ~~broker-dealers, nominees for broker-dealers (including~~
16 ~~clearing corporations), or banks, associations, or other~~
17 ~~entities holding securities in a nominee name or~~
18 ~~otherwise on behalf of a beneficial owner (collectively~~
19 ~~“Nominee Holders”), shall not be considered~~
20 ~~outstanding. However, if the foreign corporation requests~~
21 ~~all Nominee Holders to certify, with respect to all~~
22 ~~beneficial owners for whom securities are held, the~~
23 ~~number of shares held for those beneficial owners having~~
24 ~~addresses (as shown on the records of the Nominee~~
25 ~~Holder) in this state and outside of this state, then all~~
26 ~~shares so certified shall be considered outstanding and~~
27 ~~held of record by persons having addresses either in this~~
28 ~~state or outside of this state as so certified, provided that~~
29 ~~the certification so provided shall be retained with the~~
30 ~~record of shareholders and made available for inspection~~
31 ~~and copying in the same manner as is provided in Section~~
32 ~~1600 with respect to that record. A current list of~~
33 ~~beneficial owners of a foreign corporation’s securities~~
34 ~~provided to the corporation by one or more Nominee~~
35 ~~Holders or their agent pursuant to the requirements of~~
36 ~~Rule 14b-1(b)(3) or 14b-2(b)(3) as adopted on January~~
37 ~~6, 1992, promulgated under the Securities Exchange Act~~
38 ~~of 1934, shall constitute an acceptable certification with~~
39 ~~respect to beneficial owners for the purposes of this~~
40 ~~subdivision.~~

1 ~~(b) Except as provided in subdivision (c), the~~
2 ~~following chapters and sections of this division shall apply~~
3 ~~to a foreign corporation as defined in subdivision (a) (to~~
4 ~~the exclusion of the law of the jurisdiction in which it is~~
5 ~~incorporated):~~

6 ~~Chapter 1 (general provisions and definitions), to the~~
7 ~~extent applicable to the following provisions;~~

8 ~~Section 301 (annual election of directors);~~

9 ~~Section 303 (removal of directors without cause);~~

10 ~~Section 304 (removal of directors by court~~
11 ~~proceedings);~~

12 ~~Section 305, subdivision (c) (filling of director~~
13 ~~vacancies where less than a majority in office elected by~~
14 ~~shareholders);~~

15 ~~Section 309 (directors' standard of care);~~

16 ~~Section 316 (excluding paragraph (3) of subdivision (a)~~
17 ~~and paragraph (3) of subdivision (f)) (liability of~~
18 ~~directors for unlawful distributions);~~

19 ~~Section 317 (indemnification of directors, officers, and~~
20 ~~others);~~

21 ~~Sections 500 to 505, inclusive (limitations on corporate~~
22 ~~distributions in cash or property);~~

23 ~~Section 506 (liability of shareholder who receives~~
24 ~~unlawful distribution);~~

25 ~~Section 600, subdivisions (b) and (c) (requirement for~~
26 ~~annual shareholders' meeting and remedy if same not~~
27 ~~timely held);~~

28 ~~Section 708, subdivisions (a), (b), and (c)~~
29 ~~(shareholder's right to cumulate votes at any election of~~
30 ~~directors);~~

31 ~~Section 710 (supermajority vote requirement);~~

32 ~~Section 1001, subdivision (d) (limitations on sale of~~
33 ~~assets);~~

34 ~~Section 1101 (provisions following subdivision (c))~~
35 ~~(limitations on mergers);~~

36 ~~Chapter 12 (commencing with Section 1200)~~
37 ~~(reorganizations);~~

38 ~~Chapter 13 (commencing with Section 1300)~~
39 ~~(dissenters' rights);~~

40 ~~Sections 1500 and 1501 (records and reports);~~

1 ~~Section 1508 (action by Attorney General);~~

2 ~~Chapter 16 (commencing with Section 1600) (rights of~~
3 ~~inspection).~~

4 ~~(c) This section does not apply to any corporation (1)~~
5 ~~with outstanding securities listed on the New York Stock~~
6 ~~Exchange or the American Stock Exchange, or (2) with~~
7 ~~outstanding securities listed on the National Market~~
8 ~~System of the Nasdaq Stock Market (or any successor to~~
9 ~~that entity) if the corporation has at least 800 holders of~~
10 ~~its equity securities as of the record date of its most recent~~
11 ~~annual meeting of shareholders, or (3) if all of its voting~~
12 ~~shares (other than directors' qualifying shares) are~~
13 ~~owned directly or indirectly by a corporation or~~
14 ~~corporations not subject to this section. For purposes of~~
15 ~~determining the number of holders of a corporation's~~
16 ~~equity securities under clause (2) of this subdivision,~~
17 ~~there shall be included, in addition to the number of~~
18 ~~recordholders reflected on the corporation's stock~~
19 ~~records, the number of holders of the equity securities~~
20 ~~held in the name of any Nominee Holder that furnishes~~
21 ~~the corporation with a certification pursuant to~~
22 ~~subdivision (a) provided that the corporation retains the~~
23 ~~certification with the record of shareholders and makes~~
24 ~~it available for inspection and copying in the same~~
25 ~~manner as is provided in Section 1600 with respect to that~~
26 ~~record.~~

27 ~~(d) For purposes of subdivision (a), the requirements~~
28 ~~of subdivision (b) shall become applicable to a foreign~~
29 ~~corporation only upon the first day of the first income~~
30 ~~year of the corporation (i) commencing on or after the~~
31 ~~135th day of the income year immediately following the~~
32 ~~latest income year with respect to which the tests~~
33 ~~referred to in subdivision (a) have been met or (ii)~~
34 ~~commencing on or after the entry of a final order by a~~
35 ~~court of competent jurisdiction declaring that those tests~~
36 ~~have been met.~~

37 ~~(e) For purposes of subdivision (a), the requirements~~
38 ~~of subdivision (b) shall cease to be applicable to a foreign~~
39 ~~corporation (i) at the end of the first income year of the~~
40 ~~corporation immediately following the latest income year~~

~~with respect to which at least one of the tests referred to in subdivision (a) is not met or (ii) at the end of the income year of the corporation during which a final order has been entered by a court of competent jurisdiction declaring that one of those tests is not met, provided that a contrary order has not been entered before the end of the income year.~~

~~SEC. 11.~~

SEC. 10. Section 5220 of the Corporations Code is amended to read:

5220. (a) Except as provided in subdivision (d), directors shall be elected for such terms, not longer than three years, as are fixed in the articles or bylaws. However, the terms of directors of a corporation without members may be up to six years. In the absence of any provision in the articles or bylaws, the term shall be one year. The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups of one or more directors. The terms of office of the several groups and the number of directors in each group need not be uniform. No amendment of the articles or bylaws may extend the term of a director beyond that for which the director was elected, nor may any bylaw provision increasing the terms of directors be adopted without approval of the members (Section 5034).

(b) Unless the articles or bylaws otherwise provide, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified.

(c) The articles or bylaws may provide for the election of one or more directors by the members of any class voting as a class.

(d) Subdivisions (a) through (c) notwithstanding, all or any portion of the directors authorized in the articles or bylaws of a corporation may hold office by virtue of designation or selection as provided by the articles or bylaws rather than by election by a member or members. Such directors shall continue in office for the term

1 prescribed by the governing article or bylaw provision,
2 or, if there is no term prescribed, until the governing
3 article or bylaw provision is duly amended or repealed,
4 except as provided in subdivision (e) of Section 5222. A
5 bylaw provision authorized by this subdivision may be
6 adopted, amended, or repealed only by approval of the
7 members (Section 5034), subject, if so provided in the
8 bylaws, to the consent of the person or persons entitled
9 to designate or select any such director or directors.

10 (e) If a corporation has not issued memberships and
11 (1) all the directors resign, die, or become incompetent,
12 or (2) a corporation's initial directors have not been
13 named in the articles and all incorporators resign, die, or
14 become incompetent before the election of the initial
15 directors, the superior court of any county may appoint
16 directors of the corporation upon application by any
17 party in interest.

18 ~~SEC. 12.~~

19 *SEC. 11.* Section 5512 of the Corporations Code is
20 amended to read:

21 5512. (a) One-third of the voting power, represented
22 in person or by proxy, shall constitute a quorum at a
23 meeting of members, but, subject to subdivisions (b) and
24 (c), a bylaw may set a different quorum. Any bylaw
25 amendment to increase the quorum may be adopted only
26 by approval of the members (Section 5034). If a quorum
27 is present, the affirmative vote of the majority of the
28 voting power represented at the meeting, entitled to
29 vote, and voting on any matter shall be the act of the
30 members, unless the vote of a greater number or voting
31 by classes is required by this part or the articles or bylaws.

32 (b) Where a bylaw authorizes a corporation to
33 conduct a meeting with a quorum of less than one-third
34 of the voting power, then the only matters that may be
35 voted upon at any regular meeting actually attended, in
36 person or by proxy, by less than one-third of the voting
37 power are matters notice of the general nature of which
38 was given, pursuant to the first sentence of subdivision
39 (a) of Section 5511.

(c) Subject to subdivision (b), the members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough members to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the members required to constitute a quorum or, if required by this division or the articles or the bylaws, the vote of a greater number or voting by classes.

(d) In the absence of a quorum, any meeting of members may be adjourned from time to time by the vote of a majority of the votes represented either in person or by proxy, but no other business may be transacted, except as provided in subdivision (c).

~~SEC. 13.~~

SEC. 12. Section 7220 of the Corporations Code is amended to read:

7220. (a) Except as provided in subdivision (d), directors shall be elected for such terms, not longer than four years, as are fixed in the articles or bylaws. However, the terms of directors of a corporation without members may be up to six years. In the absence of any provision in the articles or bylaws, the term shall be one year. The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups of one or more directors. The terms of office of the several groups and the number of directors in each group need not be uniform. No amendment of the articles or bylaws may extend the term of a director beyond that for which the director was elected, nor may any bylaw provision increasing the terms of directors be adopted without approval of the members (Section 5034).

(b) Unless the articles or bylaws otherwise provide, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified.

(c) The articles or bylaws may provide for the election of one or more directors by the members of any class voting as a class.

1 (d) Subdivisions (a) through (c) notwithstanding, all
2 or any portion of the directors authorized in the articles
3 or bylaws of a corporation may hold office by virtue of
4 designation or selection as provided by the articles or
5 bylaws rather than by election by a member or members.
6 Such directors shall continue in office for the term
7 prescribed by the governing article or bylaw provision,
8 or, if there is no term prescribed, until the governing
9 article or bylaw provision is duly amended or repealed,
10 except as provided in subdivision (e) of Section 7222. A
11 bylaw provision authorized by this subdivision may be
12 adopted, amended, or repealed only by approval of the
13 members (Section 5034).

14 (e) If a corporation has not issued memberships and
15 (1) all the directors resign, die, or become incompetent,
16 or (2) a corporation's initial directors have not been
17 named in the articles and all incorporators resign, die, or
18 become incompetent before the election of the initial
19 directors, the superior court of any county may appoint
20 directors of the corporation upon application by any
21 party in interest.

22 ~~SEC. 14.~~

23 *SEC. 13.* Section 7512 of the Corporations Code is
24 amended to read:

25 7512. (a) One-third of the voting power, represented
26 in person or by proxy, shall constitute a quorum at a
27 meeting of members, but, subject to subdivisions (b) and
28 (c), a bylaw may set a different quorum. Any bylaw
29 amendment to increase the quorum may be adopted only
30 by approval of the members (Section 5034). If a quorum
31 is present, the affirmative vote of the majority of the
32 voting power represented at the meeting, entitled to
33 vote, and voting on any matter shall be the act of the
34 members unless the vote of a greater number or voting
35 by classes is required by this part or the articles or bylaws.

36 (b) Where a bylaw authorizes a corporation to
37 conduct a meeting with a quorum of less than one-third
38 of the voting power, then the only matters that may be
39 voted upon at any regular meeting actually attended, in
40 person or by proxy, by less than one-third of the voting

1 power are matters notice of the general nature of which
2 was given, pursuant to the first sentence of subdivision
3 (a) of Section 7511.

4 (c) Subject to subdivision (b), the members present at
5 a duly called or held meeting at which a quorum is
6 present may continue to transact business until
7 adjournment notwithstanding the withdrawal of enough
8 members to leave less than a quorum, if any action taken
9 (other than adjournment) is approved by at least a
10 majority of the members required to constitute a quorum
11 or, if required by this division, or by the articles or the
12 bylaws, the vote of the greater number or voting by
13 classes.

14 (d) In the absence of a quorum, any meeting of
15 members may be adjourned from time to time by the vote
16 of a majority of the votes represented either in person or
17 by proxy, but no other business may be transacted, except
18 as provided in subdivision (c).

19 ~~SEC. 15.~~

20 *SEC. 14.* Section 9220 of the Corporations Code is
21 amended to read:

22 9220. (a) The articles or bylaws may provide for the
23 tenure, election, selection, designation, removal, and
24 resignation of directors.

25 (b) In the absence of any provision in the articles or
26 bylaws, the term of directors shall be one year.

27 (c) Unless the articles or bylaws otherwise provide,
28 each director, including a director elected to fill a
29 vacancy, shall hold office until the expiration of the term
30 for which elected and until a successor has been elected
31 and qualified.

32 (d) If a corporation has not issued memberships and
33 (1) all the directors resign, die, or become incompetent,
34 or (2) a corporation's initial directors have not been
35 named in the articles and all incorporators resign, die, or
36 become incompetent before the election of the initial
37 directors, the superior court of any county may appoint
38 directors of the corporation upon application by any
39 party in interest.

40 ~~SEC. 16.~~

1 *SEC. 15.* Section 9412 of the Corporations Code is
2 amended to read:

3 9412. (a) One-third of the voting power, represented
4 in person, by written ballot, or by proxy, shall constitute
5 a quorum at a meeting of members. If a quorum is
6 present, the affirmative vote of the majority of the voting
7 power represented at the meeting, entitled to vote, and
8 voting on any matter shall be the act of the members.

9 (b) The members present at a duly called or held
10 meeting at which a quorum is present may continue to
11 transact business until adjournment notwithstanding the
12 withdrawal of enough members to leave less than a
13 quorum, if any action taken (other than adjournment) is
14 approved by at least a majority of the members required
15 to constitute a quorum or, if required by this division, or
16 by the articles or the bylaws, the vote of the greater
17 number or voting by classes.

18 (c) In the absence of a quorum, any meeting of
19 members may be adjourned from time to time by the vote
20 of a majority of the votes represented either in person or
21 by proxy, but no other business may be transacted, except
22 as provided in subdivision (b).

23 ~~SEC. 17.~~

24 *SEC. 16.* Section 12360 of the Corporations Code is
25 amended to read:

26 12360. (a) Except as provided in subdivision (d),
27 directors shall be elected for such terms, not longer than
28 four years, as are fixed in the articles or bylaws. In the
29 absence of any provision in the articles or bylaws, the
30 terms shall be one year. No amendment of the articles or
31 bylaws may extend the term of a director beyond that for
32 which the director was elected, nor may any bylaw
33 provision increasing the terms of directors be adopted
34 without approval of the members.

35 (b) Unless the articles or bylaws otherwise provide,
36 each director, including a director elected to fill a
37 vacancy, shall hold office until the expiration of the term
38 for which elected and until a successor has been elected
39 and qualified.

(c) The articles or bylaws may prescribe requirements for eligibility for election as a director.

(d) Subdivisions (a) through (c) notwithstanding, all or any portion of the directors authorized in the articles or bylaws of a corporation may hold office by virtue of designation or selection as provided by the articles or bylaws rather than by election by a member or members. Such directors shall continue in office for the term prescribed by the governing article or bylaw provision, or, if there is no term prescribed, until the governing article or bylaw provision is duly amended or repealed, except as provided in subdivision (f) of Section 12362. A bylaw provision authorized by this subdivision may be adopted, amended, or repealed only by approval of the members (Section 12224).

(e) If a corporation has not issued memberships and (1) all the directors resign, die, or become incompetent, or (2) a corporation's initial directors have not been named in the articles and all incorporators resign, die, or become incompetent before the election of the initial directors, the superior court of any county may appoint directors of the corporation upon application by any party in interest.

~~SEC. 18.~~

SEC. 17. Section 12462 of the Corporations Code is amended to read:

12462. (a) The lesser of 250 members or members representing 5 percent of the voting power, shall constitute a quorum at a meeting of members, but, subject to subdivisions (b) and (c), a bylaw may set a different quorum. Any bylaw amendment to increase the quorum may be adopted only by approval of the members (Section 12224). If a quorum is present, the affirmative vote of the majority of the voting power represented at the meeting, entitled to vote, and voting on any matter shall be the act of the members unless the vote of a greater number or voting by classes is required by this part or the articles or bylaws.

(b) Where a corporation is authorized to conduct a meeting with a quorum of less than one-third of the

1 voting power, then the only matters that may be voted
2 upon at any regular meeting actually attended by less
3 than one-third of the voting power are matters notice of
4 the general nature of which was given, pursuant to the
5 first sentence of subdivision (a) of Section 12461.

6 (c) Subject to subdivision (b), the members present at
7 a duly called or held meeting at which a quorum is
8 present may continue to transact business until
9 adjournment notwithstanding the withdrawal of enough
10 members to leave less than a quorum, if any action taken
11 (other than adjournment) is approved by at least a
12 majority of the members required to constitute a quorum
13 or, if required by this division or the articles or the bylaws,
14 the vote of the greater number or voting by classes.

15 (d) In the absence of a quorum, any meeting of
16 members may be adjourned from time to time by the vote
17 of a majority of the votes represented in person, but no
18 other business may be transacted, except as provided in
19 subdivision (c).

20 ~~SEC. 19.~~

21 *SEC. 18.* Section 25014.7 of the Corporations Code is
22 amended to read:

23 25014.7. (a) “Eligible rollup transaction” means a
24 rollup transaction in which the new securities issued are
25 either listed or approved for listing on a national
26 securities exchange or on the National Market System of
27 the Nasdaq Stock Market (or any successor to that
28 entity), where the national securities exchange and the
29 Nasdaq Stock Market (or its successor) have been
30 certified by the commissioner under subdivision (o) of
31 Section 25100, if the exchange or Nasdaq Stock Market (or
32 its successor) requires as a condition to listing or
33 designation that the rollup transaction be conducted in
34 accordance with procedures to protect the rights of
35 limited partners.

36 (b) The rights of limited partners will be presumed to
37 be protected if the rollup transaction provides for the
38 right of dissenting limited partners:

39 (1) To receive compensation for their limited
40 partnership units based on an appraisal of the limited

1 partnership assets performed by an independent
2 appraiser unaffiliated with the sponsor or general partner
3 of the limited partnership and which value the assets as
4 if sold in an orderly manner in a reasonable period of
5 time, plus or minus other balance sheet items, and less the
6 cost of sale or refinancing. Compensation to dissenting
7 limited partners of rollup transactions may be cash,
8 secured debt instruments, unsecured debt instruments,
9 or freely tradeable securities; provided, however, that:

10 (A) Rollups which utilize debt instruments as
11 compensation provide for a trustee and an indenture to
12 protect the rights of the debt holders and provide a rate
13 of interest based upon, but not less than, the then
14 applicable federal rate as determined in accordance with
15 Section 1274 of the Internal Revenue Code of 1986.

16 (B) Rollups which utilize unsecured debt instruments
17 as compensation, in addition to the requirements of
18 subparagraph (A) of paragraph (1), limit total leverage
19 to 70 percent of the appraised value of the assets.

20 (C) All debt securities have a term no greater than
21 seven years and provide for prepayment with 80 percent
22 of the net proceeds of any sale or refinancing of the assets
23 previously owned by the entity or any part thereof.

24 (D) Freely tradeable securities utilized as
25 compensation to dissenting limited partners must be
26 issued by an issuer whose securities are listed on a
27 certified national securities exchange or listed on the
28 National Market System of the Nasdaq Market System (or
29 its successor), if so certified, for at least one year prior to
30 the transaction, and the number of securities to be
31 received in return for limited partnership interests must
32 be determined by an appraisal of limited partnership
33 assets, conducted in a manner consistent with paragraph
34 (1) of subdivision (b), in relation to the average last sale
35 price of the freely tradeable securities in the 20-day
36 period following the transaction. If the issuer of the freely
37 tradeable securities is affiliated with the sponsor or
38 general partner, newly issued securities to be utilized as
39 compensation to dissenting limited partners shall not
40 represent more than 20 percent of the issued and

1 outstanding shares of that class of securities after giving
2 effect to the issuance. For the purposes of the preceding
3 sentence, a sponsor or general partner is “affiliated” with
4 the issuer of the freely tradeable securities if the sponsor
5 or general partner receives any material compensation
6 from the issuer or its affiliates in conjunction with the
7 rollup transaction or the purchase of the general partner’s
8 interest; provided, however, that nothing herein shall
9 restrict the ability of a sponsor or general partner to
10 receive any payment for its equity interests and
11 compensation as otherwise provided by this section.

12 (2) To receive or retain a security with substantially
13 the same terms and conditions as the security originally
14 held, provided that the receipt or retention of that
15 security is not a step in a series of subsequent transactions
16 that directly or indirectly through acquisition or
17 otherwise involves future combinations or
18 reorganizations of one or more rollup participants.
19 Securities received or retained will be considered to have
20 the same terms and conditions as the security originally
21 held if:

22 (A) There is no material adverse change to dissenting
23 limited partners’ rights, including, but not limited to,
24 rights with respect to voting, the business plan, or the
25 investment, distribution, management compensation
26 and liquidation policies of the limited partnership or
27 resulting entity.

28 (B) The dissenting limited partners receive the same
29 preferences, privileges, and priorities as they had
30 pursuant to the security originally held.

31 The rights set forth in paragraphs (1) and (2) are the
32 only rights of dissenting limited partners to which the
33 presumption under subdivision (b) applies. A general
34 partner or sponsor shall file an application for
35 qualification pursuant to Section 25110 or Section 25120
36 with respect to any other rights proposed to be offered to
37 dissenting limited partners.

38 At the time a registration statement is filed with the
39 Securities and Exchange Commission with respect to an
40 eligible rollup transaction, a general partner or sponsor

1 shall notify, to the maximum extent permitted by the
2 federal securities laws, each limited partner who has an
3 address in this state by certified mail of the following:
4 That a registration statement has been filed with the
5 Securities and Exchange Commission with respect to a
6 rollup transaction; that the general partner or sponsor
7 claims an exemption from the review process under the
8 law by virtue of Section 25014.7, which defines “eligible
9 rollup transaction”; that the general partner or sponsor
10 has the burden of proof under the law that the transaction
11 meets the definition of eligible rollup transaction; and
12 that the commissioner does not recommend or endorse
13 the transaction.

14 (c) The rights of limited partners shall be presumed
15 not to be protected if the general partner:

16 (1) Converts an equity interest in the limited
17 partnerships subject to a rollup for which consideration
18 was not paid and which was not otherwise provided for
19 in the limited partnership agreement and disclosed to
20 limited partners, into a voting interest in the new entity,
21 provided, however, an interest originally obtained in
22 order to comply with the provisions of Internal Revenue
23 Service Revenue Proclamation 89-12 may be converted.

24 (2) Fails to follow the valuation provisions in the
25 limited partnership agreements of the subject limited
26 partners when valuing their limited partnership
27 interests.

28 (3) Utilizes a future value of their equity interest
29 rather than the current value of their equity interest, as
30 determined by an appraisal conducted in a manner
31 consistent with paragraph (1) of subdivision (b), when
32 determining their interest in the new entity.

33 (d) The rights of limited partners shall be presumed
34 not to be protected as to voting rights, if:

35 (1) The voting rights in the entity resulting from a
36 rollup do not generally follow the original voting rights of
37 the limited partnerships participating in the rollup
38 transaction.

39 (2) A majority of the interest in an entity resulting
40 from a rollup transaction may not, without concurrence

1 by the sponsor, general partners, board of directors or
2 trustee, depending on the form of entity, vote to:

3 (A) Amend the limited partnership agreement,
4 articles of incorporation or bylaws, or indenture.

5 (B) Dissolve the entity.

6 (C) Remove management and elect new
7 management.

8 (D) Approve or disapprove the sale of substantially all
9 of the assets of the entity.

10 (3) The general partner or sponsor proposing a rollup
11 is not required to provide each person whose equity
12 interest is subject to the rollup transaction with a
13 document which instructs the person on the proper
14 procedure for voting against or dissenting from the rollup
15 transaction.

16 (4) The general partner or sponsor does not utilize an
17 independent third party to receive and tabulate all votes
18 and dissents, and require that the third party make the
19 tabulation available to the general partner and any
20 limited partner upon request at any time during and after
21 voting occurs.

22 (e) The rights of limited partners shall be presumed
23 not to be protected as to transaction costs if:

24 (1) Limited partners bear an unfair portion of the
25 transaction costs of a proposed rollup transaction that is
26 rejected. For purposes of this provision, transaction costs
27 are defined as the costs of printing and mailing the proxy,
28 prospectus, or other documents; legal fees not related to
29 the solicitation of votes or tenders; financial advisory fees;
30 investment banking fees; appraisal fees; accounting fees;
31 independent committee expenses; travel expenses; and
32 all other fees related to the preparatory work of the
33 transaction, but not including costs that would have
34 otherwise been incurred by the subject limited
35 partnerships in the ordinary course of business, or
36 solicitation expenses.

37 (2) Transaction costs of a rejected rollup transaction
38 are not apportioned between general and limited
39 partners of the subject limited partnerships according to
40 the final vote on the proposed transaction as follows:

1 (A) The general partner or sponsor bears all rollup
2 transaction costs in proportion to the number of votes to
3 reject the rollup transaction.

4 (B) Limited partners bear transaction costs in
5 proportion to the number of votes to approve the rollup
6 transaction.

7 (3) The dissenting limited partnership is required to
8 pay any of the costs of the rollup transaction and the
9 general partner or sponsor is not required to pay the
10 rollup transaction costs on behalf of the dissenting limited
11 partnerships in a rollup in which one or more limited
12 partnerships determines not to approve the transaction,
13 but where the rollup transaction is consummated with
14 respect to one or more approving limited partnerships.

15 (f) The rights of limited partners shall be presumed
16 not to be protected as to fees of general partners and
17 sponsors, if:

18 (1) General partners and sponsors are not prevented
19 from receiving both unearned management fees
20 discounted to a present value, if those fees were not
21 previously provided for in the limited partnership
22 agreement and disclosed to limited partners, and new
23 asset-based fees.

24 (2) Property management fees and other
25 management fees are not appropriate, not reasonable
26 and greater than what would be paid to third parties for
27 performing similar services.

28 (3) Changes in fees which are substantial and adverse
29 to limited partners are not approved by an independent
30 committee according to the facts and circumstances of
31 each transaction.

32 (g) A general partner or sponsor proposing a rollup
33 transaction shall pay all solicitation expenses related to
34 the transaction, including all preparatory work related
35 thereto, in the event the rollup transaction is not
36 approved. For purposes of this section, "solicitation
37 expenses" include direct marketing expenses such as
38 telephone calls, broker-dealer fact sheets, legal and other
39 fees related to the solicitation, as well as direct solicitation
40 compensation to brokers and dealers.

1 (h) A broker or dealer may not receive compensation
2 for soliciting votes or tenders from limited partners in
3 connection with a rollup transaction unless that
4 compensation:

5 (1) Is payable and equal in amount regardless of
6 whether the limited partner votes affirmatively or
7 negatively in the proposed rollup.

8 (2) In the aggregate, does not exceed 2 percent of the
9 exchange value of the newly created securities.

10 (3) Is paid regardless of whether the limited partners
11 reject the proposed rollup transaction.

12 (i) As used in this section, the following terms have the
13 following meanings:

14 (1) “Limited partnership” includes any entity
15 determined to be a “partnership” pursuant to Section
16 14(h)(4)(B) of the Securities Exchange Act of 1934 or
17 such other entity having a substantially economically
18 equivalent form of ownership instrument.

19 (2) “Dissenting limited partner” means a holder or a
20 beneficial interest in a limited partnership that is the
21 subject of a rollup transaction who casts a vote against the
22 rollup transaction, except that for purposes of an
23 exchange or tender offer dissenting limited partner
24 means any person who files a dissent from the terms of the
25 transaction with the party responsible for tabulating the
26 votes or tenders, to be received in connection with the
27 transaction during the period in which the offer is
28 outstanding.

29 (3) “Management fee” means a fee paid to the
30 sponsor, general partner, their affiliates, or other persons
31 for management and administration of the limited
32 partnership.

33 ~~SEC. 20.~~

34 *SEC. 19.* Section 25100 of the Corporations Code is
35 amended to read:

36 25100. The following securities are exempted from
37 Sections 25110, 25120, and 25130:

38 (a) Any security (including a revenue obligation)
39 issued or guaranteed by the United States, any state, any
40 city, county, city and county, public district, public

1 authority, public corporation, public entity, or political
2 subdivision of a state or any agency or corporate or other
3 instrumentality of any one or more of the foregoing; or
4 any certificate of deposit for any of the foregoing.

5 (b) Any security issued or guaranteed by Canada, any
6 Canadian province, any political subdivision or
7 municipality of that province, or by any other foreign
8 government with which the United States currently
9 maintains diplomatic relations, if the security is
10 recognized as a valid obligation by the issuer or
11 guarantor; or any certificate of deposit for any of the
12 foregoing.

13 (c) Any security issued or guaranteed by and
14 representing an interest in or a direct obligation of a
15 national bank or a bank or trust company incorporated
16 under the laws of this state, and any security issued by a
17 bank to one or more other banks and representing an
18 interest in an asset of the issuing bank.

19 (d) Any security issued or guaranteed by a federal
20 savings association or federal savings bank or federal land
21 bank or joint land bank or national farm loan association
22 or by any savings association, as defined in subdivision (a)
23 of Section 5102 of the Financial Code, which is subject to
24 the supervision and regulation of the Commissioner of
25 Financial Institutions of this state.

26 (e) Any security (other than an interest in all or
27 portions of a parcel or parcels of real property which are
28 subdivided land or a subdivision or in a real estate
29 development), the issuance of which is subject to
30 authorization by the Insurance Commissioner, the Public
31 Utilities Commission, or the Real Estate Commissioner of
32 this state.

33 (f) Any security consisting of any interest in all or
34 portions of a parcel or parcels of real property which are
35 subdivided lands or a subdivision or in a real estate
36 development; provided that the exemption in this
37 subdivision shall not be applicable to: (1) any investment
38 contract sold or offered for sale with, or as part of, that
39 interest, or (2) any person engaged in the business of
40 selling, distributing, or supplying water for irrigation

1 purposes or domestic use that is not a public utility except
2 that the exemption is applicable to any security of a
3 mutual water company (other than an investment
4 contract as described in paragraph (1)) offered or sold in
5 connection with subdivided lands pursuant to Chapter 2
6 (commencing with Section 14310) of Part 7 of Division 3
7 of Title 1.

8 (g) Any mutual capital certificates or savings accounts,
9 as defined in the Savings Association Law, issued by a
10 savings association, as defined by subdivision (a) of
11 Section 5102 of the Financial Code, and holding a license
12 or certificate of authority then in force from the
13 Commissioner of Financial Institutions of this state.

14 (h) Any security issued or guaranteed by any federal
15 credit union, or by any credit union organized and
16 supervised, or regulated, under the Credit Union Law.

17 (i) Any security issued or guaranteed by any railroad,
18 other common carrier, public utility, or public utility
19 holding company which is (1) subject to the jurisdiction
20 of the Interstate Commerce Commission or its successor
21 or (2) a holding company registered with the Securities
22 and Exchange Commission under the Public Utility
23 Holding Company Act of 1935 or a subsidiary of that
24 company within the meaning of that act or (3) regulated
25 in respect of the issuance or guarantee of the security by
26 a governmental authority of the United States, of any
27 state, of Canada or of any Canadian province; and the
28 security is subject to registration with or authorization of
29 issuance by that authority.

30 (j) Any security (except evidences of indebtedness,
31 whether interest bearing or not) of an issuer (1)
32 organized exclusively for educational, benevolent,
33 fraternal, religious, charitable, social, or reformatory
34 purposes and not for pecuniary profit, if no part of the net
35 earnings of the issuer inures to the benefit of any private
36 shareholder or individual, or (2) organized as a chamber
37 of commerce or trade or professional association. The fact
38 that amounts received from memberships or dues or both
39 will or may be used to construct or otherwise acquire
40 facilities for use by members of the nonprofit

1 organization does not disqualify the organization for this
2 exemption. This exemption does not apply to the
3 securities of any nonprofit organization if any promoter
4 thereof expects or intends to make a profit directly or
5 indirectly from any business or activity associated with
6 the organization or operation of that nonprofit
7 organization or from remuneration received from that
8 nonprofit organization.

9 (k) Any agreement, commonly known as a “life
10 income contract,” of an issuer (1) organized exclusively
11 for educational, benevolent, fraternal, religious,
12 charitable, social, or reformatory purposes and not for
13 pecuniary profit and (2) which the commissioner
14 designates by rule or order, with a donor in consideration
15 of a donation of property to that issuer and providing for
16 the payment to the donor or persons designated by him
17 or her of income or specified periodic payments from the
18 donated property or other property for the life of the
19 donor or those other persons.

20 (l) Any note, draft, bill of exchange, or banker’s
21 acceptance which is freely transferable and of prime
22 quality, arises out of a current transaction or the proceeds
23 of which have been or are to be used for current
24 transactions, and which evidences an obligation to pay
25 cash within nine months of the date of issuance, exclusive
26 of days of grace, or any renewal of that paper which is
27 likewise limited, or any guarantee of that paper or of that
28 renewal, provided that the paper is not offered to the
29 public in amounts of less than twenty-five thousand
30 dollars (\$25,000) in the aggregate to any one purchaser.
31 In addition, the commissioner may, by rule or order,
32 exempt any issuer of any notes, drafts, bills of exchange
33 or banker’s acceptances from qualification of those
34 securities when the commissioner finds that the
35 qualification is not necessary or appropriate in the public
36 interest or for the protection of investors.

37 (m) Any security issued by any corporation organized
38 and existing under the provisions of Chapter 1
39 (commencing with Section 54001) of Division 20 of the
40 Food and Agricultural Code.

1 (n) Any beneficial interest in an employees' pension,
2 profit-sharing, stock bonus or similar benefit plan which
3 meets the requirements for qualification under Section
4 401 of the federal Internal Revenue Code or any statute
5 amendatory thereof or supplementary thereto. A
6 determination letter from the Internal Revenue Service
7 stating that an employees' pension, profit-sharing, stock
8 bonus or similar benefit plan meets those requirements
9 shall be conclusive evidence that the plan is an
10 employees' pension, profit-sharing, stock bonus or similar
11 benefit plan within the meaning of the first sentence of
12 this subdivision until the date the determination letter is
13 revoked in writing by the Internal Revenue Service,
14 regardless of whether or not the revocation is retroactive.

15 (o) Any security listed or approved for listing upon
16 notice of issuance on a national securities exchange or on
17 the National Market System of the Nasdaq Stock Market
18 (or any successor to that entity), if the exchange or
19 Nasdaq Stock Market (or its successor) has been certified
20 by rule or order of the commissioner and any warrant or
21 right to purchase or subscribe to the security. The
22 exemption afforded by this subdivision does not apply to
23 securities listed or approved for listing upon notice of
24 issuance on a national securities exchange or on the
25 National Market System of the Nasdaq Stock Market (or
26 its successor), in a rollup transaction unless the rollup
27 transaction is an eligible rollup transaction as defined in
28 Section 25014.7.

29 That certification of any exchange or the Nasdaq Stock
30 Market (or its successor) shall be made by the
31 commissioner upon the written request of the exchange
32 or Nasdaq Stock Market (or its successor) if the
33 commissioner finds that the exchange or Nasdaq Stock
34 Market (or its successor): (i) in acting on applications for
35 listing of common stock substantially applies the
36 minimum standards set forth in either alternative (A) or
37 (B) of paragraph (1), and (ii) in considering suspension
38 or removal from listing, substantially applies each of the
39 criteria set forth in paragraph (2).

40 (1) Listing standards:

(A) (i) Shareholders' equity of at least four million dollars (\$4,000,000).

(ii) Pretax income of at least seven hundred fifty thousand dollars (\$750,000) in the issuer's last fiscal year or in two of its last three fiscal years.

(iii) Minimum public distribution of 500,000 shares (exclusive of the holdings of officers, directors, controlling shareholders, and other concentrated or family holdings), together with a minimum of 800 public holders or minimum public distribution of 1,000,000 shares together with a minimum of 400 public holders. The exchange or Nasdaq Stock Market (or its successor) may also consider the listing of a company's securities if the company has a minimum of 500,000 shares publicly held, a minimum of 400 shareholders and daily trading volume in the issue has been approximately 2,000 shares or more for the six months preceding the date of application. In evaluating the suitability of an issue for listing under this trading provision, the exchange or Nasdaq Stock Market (or its successor) shall review the nature and frequency of that activity and any other factors as it may determine to be relevant in ascertaining whether the issue is suitable for trading. A security that trades infrequently shall not be considered for listing under this paragraph even though average daily volume amounts to 2,000 shares per day or more.

Companies whose securities are concentrated in a limited geographical area, or whose securities are largely held in block by institutional investors, normally may not be considered eligible for listing unless the public distribution appreciably exceeds 500,000 shares.

(iv) Minimum price of three dollars (\$3) per share for a reasonable period of time prior to the filing of a listing application; provided, however, in certain instances an exchange or Nasdaq Stock Market (or its successor) may favorably consider listing an issue selling for less than three dollars (\$3) per share after considering all pertinent factors, including market conditions in general, whether historically the issue has sold above three dollars (\$3) per share, the applicant's capitalization, and the

1 number of outstanding and publicly held shares of the
2 issue.

3 (v) An aggregate market value for publicly held shares
4 of at least three million dollars (\$3,000,000).

5 (B) (i) Shareholders' equity of at least four million
6 dollars (\$4,000,000).

7 (ii) Minimum public distribution set forth in clause
8 (iii) of subparagraph (A) of paragraph (1).

9 (iii) Operating history of at least three years.

10 (iv) An aggregate market value for publicly held
11 shares of at least fifteen million dollars (\$15,000,000).

12 (2) Criteria for consideration of suspension or removal
13 from listing:

14 (i) If a company that (A) has shareholders' equity of
15 less than one million dollars (\$1,000,000) has sustained net
16 losses in each of its two most recent fiscal years, or (B) has
17 net tangible assets of less than three million dollars
18 (\$3,000,000) and has sustained net losses in three of its
19 four most recent fiscal years.

20 (ii) If the number of shares publicly held (excluding
21 the holdings of officers, directors, controlling
22 shareholders and other concentrated or family holdings)
23 is less than 150,000.

24 (iii) If the total number of shareholders is less than 400
25 or if the number of shareholders of lots of 100 shares or
26 more is less than 300.

27 (iv) If the aggregate market value of shares publicly
28 held is less than seven hundred fifty thousand dollars
29 (\$750,000).

30 (v) If shares of common stock sell at a price of less than
31 three dollars (\$3) per share for a substantial period of
32 time and the issuer shall fail to effectuate a reverse stock
33 split of the shares within a reasonable period of time after
34 being requested by the exchange to take that action.

35 A national securities exchange or Nasdaq Stock Market
36 (or its successor), certified by rule or order of the
37 commissioner under this subdivision, shall file annual
38 reports when requested to do so by the commissioner.
39 The annual reports shall contain, by issuer: the variances
40 granted to an exchange's listing standards or Nasdaq

1 Stock Market's (or its successor) criteria, including
2 variances from corporate governance and voting rights'
3 standards, for any security of that issuer; the reasons for
4 the variances; a discussion of the review procedure
5 instituted by the exchange or Nasdaq Stock Market (or its
6 successor) to determine the effect of the variances on
7 investors and whether the variances should be continued;
8 and any other information that the commissioner deems
9 relevant. The purpose of these reports is to assist the
10 commissioner in determining whether the quantitative
11 and qualitative requirements of this subdivision are
12 substantially being met by the exchange in general or
13 with regard to any particular security.

14 The commissioner after appropriate notice and
15 opportunity for hearing in accordance with the
16 provisions of the Administrative Procedure Act, Chapter
17 5 (commencing with Section 11500) of Part 1 of Division
18 3 of Title 2 of the Government Code, may, in his or her
19 discretion, by rule or order, decertify any exchange or
20 Nasdaq Stock Market (or its successor) previously
21 certified that ceases substantially to apply the minimum
22 standards or criteria as set forth in paragraphs (1) and (2).

23 A rule or order of certification shall conclusively
24 establish that any security listed or approved for listing
25 upon notice of issuance on any exchange, or listed on the
26 National Market System of the Nasdaq Stock Market (or
27 its successor), named in a rule or order of certification,
28 and any warrant or right to purchase or subscribe to that
29 security, is exempt under this subdivision until the
30 adoption by the commissioner of any rule or order
31 decertifying the exchange or the Nasdaq Stock Market
32 (or its successor).

33 (p) A promissory note secured by a lien on real
34 property, which is neither one of a series of notes of equal
35 priority secured by interests in the same real property nor
36 a note in which beneficial interests are sold to more than
37 one person or entity.

38 (q) Any unincorporated interindemnity or reciprocal
39 or interinsurance contract, that qualifies under the
40 provisions of Section 1280.7 of the Insurance Code,

1 between members of a cooperative corporation,
2 organized and operating under Part 2 (commencing with
3 Section 12200) of Division 3 of Title 1, and whose
4 members consist only of physicians and surgeons licensed
5 in California, which contracts indemnify solely in respect
6 to medical malpractice claims against the members, and
7 which do not collect in advance of loss any moneys other
8 than contributions by each member to a collective
9 reserve trust fund or for necessary expenses of
10 administration.

11 (1) Whenever it appears to the commissioner that any
12 person has engaged or is about to engage in any act or
13 practice constituting a violation of any provision of
14 Section 1280.7 of the Insurance Code, the commissioner
15 may, in the commissioner's discretion, bring an action in
16 the name of the people of the State of California in the
17 superior court to enjoin the acts or practices or to enforce
18 compliance with Section 1280.7 of the Insurance Code.
19 Upon a proper showing a permanent or preliminary
20 injunction, a restraining order, or a writ of mandate shall
21 be granted and a receiver or conservator may be
22 appointed for the defendant or the defendant's assets.

23 (2) The commissioner may, in the commissioner's
24 discretion, (A) make public or private investigations
25 within or outside of this state as the commissioner deems
26 necessary to determine whether any person has violated
27 or is about to violate any provision of Section 1280.7 of the
28 Insurance Code or to aid in the enforcement of Section
29 1280.7, and (B) publish information concerning the
30 violation of Section 1280.7.

31 (3) For the purpose of any investigation or proceeding
32 under this section, the commissioner or any officer
33 designated by the commissioner may administer oaths
34 and affirmations, subpoena witnesses, compel their
35 attendance, take evidence, and require the production of
36 any books, papers, correspondence, memoranda,
37 agreements, or other documents or records which the
38 commissioner deems relevant or material to the inquiry.

39 (4) In case of contumacy by, or refusal to obey a
40 subpoena issued to, any person, the superior court, upon

1 application by the commissioner, may issue to the person
2 an order requiring the person to appear before the
3 commissioner, or the officer designated by the
4 commissioner, to produce documentary evidence, if so
5 ordered, or to give evidence touching the matter under
6 investigation or in question. Failure to obey the order of
7 the court may be punished by the court as a contempt.

8 (5) No person is excused from attending or testifying
9 or from producing any document or record before the
10 commissioner or in obedience to the subpoena of the
11 commissioner or any officer designated by the
12 commissioner, or in any proceeding instituted by the
13 commissioner, on the ground that the testimony or
14 evidence (documentary or otherwise), required of the
15 person may tend to incriminate the person or subject the
16 person to a penalty or forfeiture, but no individual may
17 be prosecuted or subjected to any penalty or forfeiture for
18 or on account of any transaction, matter, or thing
19 concerning which the person is compelled, after validly
20 claiming the privilege against self-incrimination, to
21 testify or produce evidence (documentary or otherwise),
22 except that the individual testifying is not exempt from
23 prosecution and punishment for perjury or contempt
24 committed in testifying.

25 (6) The cost of any review, examination, audit, or
26 investigation made by the commissioner under Section
27 1280.7 of the Insurance Code shall be paid to the
28 commissioner by the person subject to the review,
29 examination, audit, or investigation, and the
30 commissioner may maintain an action for the recovery of
31 these costs in any court of competent jurisdiction. In
32 determining the cost, the commissioner may use the
33 actual amount of the salary or other compensation paid
34 to the persons making the review, examination, audit, or
35 investigation plus the actual amount of expenses
36 including overhead reasonably incurred in the
37 performance of the work.

38 The recoverable cost of each review, examination,
39 audit, or investigation made by the commissioner under
40 Section 1280.7 of the Insurance Code shall not exceed

1 twenty-five thousand dollars (\$25,000), except that costs
2 exceeding twenty-five thousand dollars (\$25,000) shall be
3 recoverable if the costs are necessary to prevent a
4 violation of any provision of Section 1280.7 of the
5 Insurance Code.

6 (r) Any shares or memberships issued by any
7 corporation organized and existing pursuant to the
8 provisions of Part 2 (commencing with Section 12200) of
9 Division 3 of Title 1, provided the aggregate investment
10 of any shareholder or member in shares or memberships
11 sold pursuant to this subdivision does not exceed three
12 hundred dollars (\$300). This exemption does not apply to
13 the shares or memberships of that corporation if any
14 promoter thereof expects or intends to make a profit
15 directly or indirectly from any business or activity
16 associated with the corporation or the operation of the
17 corporation or from remuneration, other than reasonable
18 salary, received from the corporation. This exemption
19 does not apply to nonvoting shares or memberships of
20 that corporation issued to any person who does not
21 possess, and who will not acquire in connection with the
22 issuance of nonvoting shares or memberships, voting
23 power (Section 12253) in the corporation. This
24 exemption also does not apply to shares or memberships
25 issued by a nonprofit cooperative corporation organized
26 to facilitate the creation of an unincorporated
27 interindemnity arrangement that provides
28 indemnification for medical malpractice to its physician
29 and surgeon members as set forth in subdivision (q).

30 (s) Any security consisting of or representing an
31 interest in a pool of mortgage loans that meets each of the
32 following requirements:

33 (1) The pool consists of whole mortgage loans or
34 participation interests in those loans, which loans were
35 originated or acquired in the ordinary course of business
36 by a national bank or federal savings association or federal
37 savings bank having its principal office in this state, by a
38 bank incorporated under the laws of this state or by a
39 savings association as defined in subdivision (a) of Section
40 5102 of the Financial Code and which is subject to the

1 supervision and regulation of the Commissioner of
2 Financial Institutions, and each of which at the time of
3 transfer to the pool is an authorized investment for the
4 originating or acquiring institution.

5 (2) The pool of mortgage loans is held in trust by a
6 trustee which is a financial institution specified in
7 paragraph (1) as trustee or otherwise.

8 (3) The loans are serviced by a financial institution
9 specified in paragraph (1).

10 (4) The security is not offered in amounts of less than
11 twenty-five thousand dollars (\$25,000) in the aggregate to
12 any one purchaser.

13 (5) The security is offered pursuant to a registration
14 under the Securities Act of 1933, or pursuant to an
15 exemption under Regulation A under that act, or in the
16 opinion of counsel for the issuer, is offered pursuant to an
17 exemption under Section 4(2) of that act.

18 (t) (1) Any security issued or guaranteed by and
19 representing an interest in or a direct obligation of an
20 industrial loan company incorporated under the laws of
21 the state and authorized by the Commissioner of
22 Financial Institutions to engage in industrial loan
23 business.

24 (2) Any investment certificate in or issued by any
25 industrial loan company that is organized under the laws
26 of a state of the United States other than this state, that
27 is insured by the Federal Deposit Insurance Corporation,
28 and that maintains a branch office in this state.

29 ~~SEC. 21.~~

30 *SEC. 20.* Section 25101 of the Corporations Code is
31 amended to read:

32 25101. The following securities are exempt from the
33 provisions of Section 25130:

34 (a) Any security issued by a person that is the issuer of
35 any security listed on a national securities exchange, or on
36 the National Market System of the Nasdaq Stock Market
37 (or any successor to that entity), if the exchange or
38 Nasdaq Stock Market (or its successor) is certified by rule
39 or order of the commissioner.

1 (b) The exemption provided by subdivision (a) does
2 not apply to securities offered pursuant to a registration
3 under the Securities Act of 1933 or pursuant to the
4 exemption afforded by Regulation A under that act if the
5 aggregate offering price of the securities offered
6 pursuant to that exemption exceeds fifty thousand dollars
7 (\$50,000).

8 ~~SEC. 22. Section 25102 of the Corporations Code is~~
9 ~~amended to read:~~

10 ~~25102. The following transactions are exempted from~~
11 ~~the provisions of Section 25110:~~

12 ~~(a) Any offer (but not a sale) not involving any public~~
13 ~~offering and the execution and delivery of any agreement~~
14 ~~for the sale of securities pursuant to the offer if (1) the~~
15 ~~agreement contains substantially the following provision:~~
16 ~~“The sale of the securities that are the subject of this~~
17 ~~agreement has not been qualified with the Commissioner~~
18 ~~of Corporations of the State of California and the issuance~~
19 ~~of the securities or the payment or receipt of any part of~~
20 ~~the consideration therefor prior to the qualification is~~
21 ~~unlawful, unless the sale of securities is exempt from the~~
22 ~~qualification by Section 25100, 25102, or 25105 of the~~
23 ~~California Corporations Code. The rights of all parties to~~
24 ~~this agreement are expressly conditioned upon the~~
25 ~~qualification being obtained, unless the sale is so exempt”;~~
26 ~~and (2) no part of the purchase price is paid or received~~
27 ~~and none of the securities are issued until the sale of the~~
28 ~~securities is qualified under this law unless the sale of~~
29 ~~securities is exempt from the qualification by this section,~~
30 ~~Section 25100, or 25105.~~

31 ~~(b) Any offer (but not a sale) of a security for which~~
32 ~~a registration statement has been filed under the~~
33 ~~Securities Act of 1933 but has not yet become effective,~~
34 ~~or for which an offering statement under Regulation A~~
35 ~~has been filed but has not yet been qualified, if no stop~~
36 ~~order or refusal order is in effect and no public~~
37 ~~proceeding or examination looking toward such an order~~
38 ~~is pending under Section 8 of the act and no order under~~
39 ~~Section 25140 or subdivision (a) of Section 25143 is in~~
40 ~~effect under this law.~~

~~(e) Any offer (but not a sale) and the execution and delivery of any agreement for the sale of securities pursuant to the offer as may be permitted by the commissioner upon application. Any negotiating permit under this subdivision shall be conditioned to the effect that none of the securities may be issued and none of the consideration therefor may be received or accepted until the sale of the securities is qualified under this law.~~

~~(d) Any transaction or agreement between the issuer and an underwriter or among underwriters if the sale of the securities is qualified, or exempt from qualification, at the time of distribution thereof in this state, if any.~~

~~(e) Any offer or sale of any evidence of indebtedness, whether secured or unsecured, and any guarantee thereof, in a transaction not involving any public offering.~~

~~(f) Any offer or sale of any security in a transaction (other than an offer or sale to a pension or profit-sharing trust of the issuer) that meets each of the following criteria:~~

~~(1) Sales of the security are not made to more than 35 persons, including persons not in this state.~~

~~(2) All purchasers either have a preexisting personal or business relationship with the offeror or any of its partners, officers, directors or controlling persons, or managers (as appointed or elected by the members) if the offeror is a limited liability company, or by reason of their business or financial experience or the business or financial experience of their professional advisers who are unaffiliated with and who are not compensated by the issuer or any affiliate or selling agent of the issuer, directly or indirectly, could be reasonably assumed to have the capacity to protect their own interests in connection with the transaction.~~

~~(3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account (or a trust account if the purchaser is a trustee) and not with a view to or for sale in connection with any distribution of the security.~~

~~(4) The offer and sale of the security is not accomplished by the publication of any advertisement.~~

~~1 The number of purchasers referred to above is exclusive
2 of any described in subdivision (i), any officer, director,
3 or affiliate of the issuer, or manager (as appointed or
4 elected by the members) if the issuer is a limited liability
5 company, and any other purchaser who the
6 commissioner designates by rule. For purposes of this
7 section, a husband and wife (together with any custodian
8 or trustee acting for the account of their minor children)
9 are counted as one person and a partnership, corporation,
10 or other organization that was not specifically formed for
11 the purpose of purchasing the security offered in reliance
12 upon this exemption, is counted as one person. The
13 commissioner may by rule require the issuer to file a
14 notice of transactions under this subdivision. However,
15 the failure to file the notice or the failure to file the notice
16 within the time specified by the rule of the commissioner
17 shall not affect the availability of this exemption. An issuer
18 who fails to file the notice as provided by rule of the
19 commissioner shall, within 15 business days after demand
20 by the commissioner, file the notice and pay to the
21 commissioner a fee equal to the fee payable had the
22 transaction been qualified under Section 25110.~~

~~23 (g) Any offer or sale of conditional sale agreements,
24 equipment trust certificates, or certificates of interest or
25 participation therein or partial assignments thereof,
26 covering the purchase of railroad rolling stock or
27 equipment or the purchase of motor vehicles, aircraft, or
28 parts thereof, in a transaction not involving any public
29 offering.~~

~~30 (h) Any offer or sale of voting common stock by a
31 corporation incorporated in any state if, immediately
32 after the proposed sale and issuance, there will be only
33 one class of stock of the corporation outstanding that is
34 owned beneficially by no more than 35 persons, provided
35 all of the following requirements have been met:~~

~~36 (1) The offer and sale of the stock is not accompanied
37 by the publication of any advertisement, and no selling
38 expenses have been given, paid, or incurred in
39 connection therewith.~~

1 ~~(2) The consideration to be received by the issuer for~~
2 ~~the stock to be issued consists of any of the following:~~

3 ~~(A) Only assets (which may include cash) of an~~
4 ~~existing business enterprise transferred to the issuer upon~~
5 ~~its initial organization, of which all of the persons who are~~
6 ~~to receive the stock to be issued pursuant to this~~
7 ~~exemption were owners during, and the enterprise was~~
8 ~~operated for, a period of not less than one year~~
9 ~~immediately preceding the proposed issuance, and the~~
10 ~~ownership of the enterprise immediately prior to the~~
11 ~~proposed issuance was in the same proportions as the~~
12 ~~shares of stock are to be issued.~~

13 ~~(B) Only cash or cancellation of indebtedness for~~
14 ~~money borrowed, or both, upon the initial organization~~
15 ~~of the issuer, provided all of the stock is issued for the~~
16 ~~same price per share.~~

17 ~~(C) Only cash, provided the sale is approved in writing~~
18 ~~by each of the existing shareholders and the purchaser or~~
19 ~~purchasers are existing shareholders.~~

20 ~~(D) In a case where after the proposed issuance there~~
21 ~~will be only one owner of the stock of the issuer, only any~~
22 ~~legal consideration.~~

23 ~~(3) No promotional consideration has been given,~~
24 ~~paid, or incurred in connection with the issuance.~~
25 ~~Promotional consideration means any consideration paid~~
26 ~~directly or indirectly to a person who, acting alone or in~~
27 ~~conjunction with one or more other persons, takes the~~
28 ~~initiative in founding and organizing the business or~~
29 ~~enterprise of an issuer for services rendered in~~
30 ~~connection with the founding or organizing.~~

31 ~~(4) A notice in a form prescribed by rule of the~~
32 ~~commissioner, signed by an active member of the State~~
33 ~~Bar of California, is filed with or mailed for filing to the~~
34 ~~commissioner not later than 10 business days after receipt~~
35 ~~of consideration for the securities by the issuer. That~~
36 ~~notice shall contain an opinion of the member of the State~~
37 ~~Bar of California that the exemption provided by this~~
38 ~~subdivision is available for the offer and sale of the~~
39 ~~securities. However, the failure to file the notice as~~
40 ~~required by this subdivision and the rules of the~~

1 commissioner shall not affect the availability of this
2 exemption. An issuer who fails to file the notice within the
3 time specified by this subdivision shall, within 15 business
4 days after demand by the commissioner, file the notice
5 and pay to the commissioner a fee equal to the fee payable
6 had the transaction been qualified under Section 25110.
7 The notice, except when filed on behalf of a California
8 corporation, shall be accompanied by an irrevocable
9 consent, in the form that the commissioner by rule
10 prescribes, appointing the commissioner or his or her
11 successor in office to be the issuer's attorney to receive
12 service of any lawful process in any noncriminal suit,
13 action, or proceeding against it or its successor that arises
14 under this law or any rule or order hereunder after the
15 consent has been filed, with the same force and validity
16 as if served personally on the issuer. An issuer on whose
17 behalf a consent has been filed in connection with a
18 previous qualification or exemption from qualification
19 under this law (or application for a permit under any
20 prior law if the application or notice under this law states
21 that the consent is still effective) need not file another.
22 Service may be made by leaving a copy of the process in
23 the office of the commissioner, but it is not effective
24 unless (A) the plaintiff, who may be the commissioner in
25 a suit, action, or proceeding instituted by him or her,
26 forthwith sends notice of the service and a copy of the
27 process by registered or certified mail to the defendant
28 or respondent at its last address on file with the
29 commissioner, and (B) the plaintiff's affidavit of
30 compliance with this section is filed in the case on or
31 before the return day of the process, if any, or within the
32 further time as the court allows.

33 (5) Each purchaser represents that the purchaser is
34 purchasing for the purchaser's own account, or a trust
35 account if the purchaser is a trustee, and not with a view
36 to or for sale in connection with any distribution of the
37 stock.

38 For the purposes of this subdivision, all securities held
39 by a husband and wife, whether or not jointly, shall be
40 considered to be owned by one person, and all securities

1 ~~held by a corporation that has issued stock pursuant to this~~
2 ~~exemption shall be considered to be held by the~~
3 ~~shareholders to whom it has issued the stock.~~

4 ~~All stock issued by a corporation pursuant to this~~
5 ~~subdivision as it existed prior to the effective date of the~~
6 ~~amendments to this section made during the 1996 portion~~
7 ~~of the 1995-96 Regular Session that required the issuer to~~
8 ~~have stamped or printed prominently on the face of the~~
9 ~~stock certificate a legend in a form prescribed by rule of~~
10 ~~the commissioner restricting transfer of the stock in a~~
11 ~~manner provided for by that rule shall not be subject to~~
12 ~~the transfer restriction legend requirement and, by~~
13 ~~operation of law, the corporation is authorized to remove~~
14 ~~that transfer restriction legend from the certificates of~~
15 ~~those shares of stock issued by the corporation pursuant~~
16 ~~to this subdivision as it existed prior to the effective date~~
17 ~~of the amendments to this section made during the 1996~~
18 ~~portion of the 1995-96 Regular Session.~~

19 ~~(i) Any offer or sale (1) to a bank, savings and loan~~
20 ~~association, trust company, insurance company,~~
21 ~~investment company registered under the Investment~~
22 ~~Company Act of 1940, pension or profit-sharing trust~~
23 ~~(other than a pension or profit-sharing trust of the issuer,~~
24 ~~a self-employed individual retirement plan, or individual~~
25 ~~retirement account), or other institutional investor or~~
26 ~~governmental agency or instrumentality that the~~
27 ~~commissioner may designate by rule, whether the~~
28 ~~purchaser is acting for itself or as trustee, or (2) to any~~
29 ~~corporation with outstanding securities registered under~~
30 ~~Section 12 of the Securities Exchange Act of 1934 or any~~
31 ~~wholly owned subsidiary of the corporation that after the~~
32 ~~offer and sale will own directly or indirectly 100 percent~~
33 ~~of the outstanding capital stock of the issuer, provided the~~
34 ~~purchaser represents that it is purchasing for its own~~
35 ~~account (or for the trust account) for investment and not~~
36 ~~with a view to or for sale in connection with any~~
37 ~~distribution of the security.~~

38 ~~(j) Any offer or sale of any certificate of interest or~~
39 ~~participation in an oil or gas title or lease (including~~

~~1 subsurface gas storage and payments out of production)
2 if either of the following apply:~~

~~3 (1) All of the purchasers meet one of the following
4 requirements:~~

~~5 (A) Are and have been during the preceding two
6 years engaged primarily in the business of drilling for,
7 producing, or refining oil or gas (or whose corporate
8 predecessor, in the case of a corporation, has been so
9 engaged):~~

~~10 (B) Are persons described in clause (1) of subdivision
11 (i):~~

~~12 (C) Have been found by the commissioner upon
13 written application to be substantially engaged in the
14 business of drilling for, producing, or refining oil or gas so
15 as not to require the protection provided by this law
16 (which finding shall be effective until rescinded):~~

~~17 (2) The security is concurrently hypothecated to a
18 bank in the ordinary course of business to secure a loan
19 made by the bank, provided that each purchaser
20 represents that it is purchasing for its own account for
21 investment and not with a view to or for sale in
22 connection with any distribution of the security.~~

~~23 (k) Any offer or sale of any security under, or pursuant
24 to, a plan of reorganization under Chapter 11 of the
25 federal bankruptcy law that has been confirmed or is
26 subject to confirmation by the decree or order of a court
27 of competent jurisdiction.~~

~~28 (l) Any offer or sale of an option, warrant, put, call, or
29 straddle, and any guarantee of any of these securities, by
30 a person who is not the issuer of the security subject to the
31 right, if the transaction, had it involved an offer or sale of
32 the security subject to the right by the person, would not
33 have violated Section 25110 or 25130.~~

~~34 (m) Any offer or sale of a stock to a pension,
35 profit-sharing, stock bonus, or employee stock ownership
36 plan, provided that (1) the plan meets the requirements
37 for qualification under Section 401 of the Internal
38 Revenue Code, and (2) the employees are not required
39 or permitted individually to make any contributions to
40 the plan. The exemption provided by this subdivision~~

1 shall not be affected by whether the stock is contributed
2 to the plan, purchased from the issuer with contributions
3 by the issuer or an affiliate of the issuer, or purchased from
4 the issuer with funds borrowed from the issuer, an
5 affiliate of the issuer, or any other lender.

6 (n) Any offer or sale of any security in a transaction,
7 other than an offer or sale of a security in a rollup
8 transaction, that meets all of the following criteria:

9 (1) The issuer is (A) a California corporation or
10 foreign corporation that, at the time of the filing of the
11 notice required under this subdivision, is subject to
12 Section 2115, or (B) any other form of business entity,
13 including without limitation a partnership or trust
14 organized under the laws of this state. The exemption
15 provided by this subdivision is not available to a “blind
16 pool” issuer, as that term is defined by the commissioner,
17 or to an investment company subject to the Investment
18 Company Act of 1940.

19 (2) Sales of securities are made only to qualified
20 purchasers or other persons the issuer reasonably
21 believes, after reasonable inquiry, to be qualified
22 purchasers. A corporation, partnership, or other
23 organization specifically formed for the purpose of
24 acquiring the securities offered by the issuer in reliance
25 upon this exemption may be a qualified purchaser if each
26 of the equity owners of the corporation, partnership, or
27 other organization is a qualified purchaser. Qualified
28 purchasers include the following:

29 (A) A person designated in Section 260.102.13 of Title
30 10 of the California Code of Regulations.

31 (B) A person designated in subdivision (i) or any rule
32 of the commissioner adopted thereunder.

33 (C) A pension or profit-sharing trust of the issuer, a
34 self-employed individual retirement plan, or an
35 individual retirement account, if the investment
36 decisions made on behalf of the trust, plan, or account are
37 made solely by persons who are qualified purchasers.

38 (D) An organization described in Section 501(c)(3) of
39 the Internal Revenue Code, corporation, Massachusetts
40 or similar business trust, or partnership, each with total

~~assets in excess of five million dollars (\$5,000,000) according to its most recent audited financial statements.~~

~~(E) With respect to the offer and sale of one class of voting common stock of an issuer or of preferred stock of an issuer entitling the holder thereof to at least the same voting rights as the issuer's one class of voting common stock, provided that the issuer has only one class voting common stock outstanding upon consummation of the offer and sale, a natural person who, either individually or jointly with the person's spouse, (i) has a minimum net worth of two hundred fifty thousand dollars (\$250,000) and had, during the immediately preceding tax year, gross income in excess of one hundred thousand dollars (\$100,000) and reasonably expects gross income in excess of one hundred thousand dollars (\$100,000) during the current tax year or (ii) has a minimum net worth of five hundred thousand dollars (\$500,000). "Net worth" shall be determined exclusive of home, home furnishings, and automobiles. Other assets included in the computation of net worth may be valued at fair market value.~~

~~Each natural person specified above, by reason of his or her business or financial experience, or the business or financial experience of his or her professional adviser, who is unaffiliated with and who is not compensated, directly or indirectly, by the issuer or any affiliate or selling agent of the issuer, can be reasonably assumed to have the capacity to protect his or her interests in connection with the transaction. The amount of the investment of each natural person shall not exceed 10 percent of the net worth, as determined by this subparagraph, of that natural person.~~

~~(F) Any other purchaser designated as qualified by rule of the commissioner.~~

~~(3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account (or trust account, if the purchaser is a trustee) and not with a view to or for sale in connection with a distribution of the security.~~

~~(4) Each natural person purchaser, including a corporation, partnership, or other organization~~

1 specifically formed by natural persons for the purpose of
 2 acquiring the securities offered by the issuer, receives, at
 3 least five business days before securities are sold to, or a
 4 commitment to purchase is accepted from, the
 5 purchaser, a written offering disclosure statement that
 6 shall meet the disclosure requirements of Regulation D
 7 (17 C.F.R. 230.501 et seq.), and any other information as
 8 may be prescribed by rule of the commissioner, provided
 9 that the issuer shall not be obligated pursuant to this
 10 paragraph to provide this disclosure statement to a
 11 natural person qualified under Section 260.102.13 of Title
 12 10 of the California Code of Regulations. The offer or sale
 13 of securities pursuant to a disclosure statement required
 14 by this paragraph that is in violation of Section 25401, or
 15 that fails to meet the disclosure requirements of
 16 Regulation D (17 C.F.R. 230.501 et seq.), shall not render
 17 unavailable to the issuer the claim of an exemption from
 18 Section 25110 afforded by this subdivision. This paragraph
 19 does not impose, directly or indirectly, any additional
 20 disclosure obligation with respect to any other exemption
 21 from qualification available under any other provision of
 22 this section.

23 (5) (A) A general announcement of proposed
 24 offering may be published by written document only,
 25 provided that the general announcement of proposed
 26 offering sets forth the following required information:

- 27 (i) The name of the issuer of the securities.
- 28 (ii) The full title of the security to be issued.
- 29 (iii) The anticipated suitability standards for
 30 prospective purchasers.
- 31 (iv) A statement that (I) no money or other
 32 consideration is being solicited or will be accepted, (II)
 33 an indication of interest made by a prospective purchaser
 34 involves no obligation or commitment of any kind, and;
 35 if the issuer is required by paragraph (4) to deliver a
 36 disclosure statement to prospective purchasers, (III) no
 37 sales will be made or commitment to purchase accepted
 38 until five business days after delivery of a disclosure
 39 statement and subscription information to the

1 prospective purchaser in accordance with the
2 requirements of this subdivision.
3 (v) Any other information required by rule of the
4 commissioner.
5 (vi) The following legend: "For more complete
6 information about (Name of Issuer) and (Full Title of
7 Security), send for additional information from (Name
8 and Address) by sending this coupon or calling
9 (Telephone Number)."
10 (B) The general announcement of proposed offering
11 referred to in subparagraph (A) may also set forth the
12 following information:
13 (i) A brief description of the business of the issuer.
14 (ii) The geographic location of the issuer and its
15 business.
16 (iii) The price of the security to be issued, or, if the
17 price is not known, the method of its determination or the
18 probable price range as specified by the issuer, and the
19 aggregate offering price.
20 (C) The general announcement of proposed offering
21 shall contain only the information that is set forth in this
22 paragraph.
23 (D) Dissemination of the general announcement of
24 proposed offering to persons who are not qualified
25 purchasers, without more, shall not disqualify the issuer
26 from claiming the exemption under this subdivision.
27 (6) No telephone solicitation shall be permitted until
28 the issuer has determined that the prospective purchaser
29 to be solicited is a qualified purchaser.
30 (7) The issuer files a notice of transaction under this
31 subdivision both (A) concurrent with the publication of
32 a general announcement of proposed offering or at the
33 time of the initial offer of the securities, whichever occurs
34 first, accompanied by a filing fee, and (B) within 10
35 business days following the close or abandonment of the
36 offering, but in no case more than 210 days from the date
37 of filing the first notice. The first notice of transaction
38 under subparagraph (A) shall contain an undertaking, in
39 a form acceptable to the commissioner, to deliver any
40 disclosure statement required by paragraph (4) to be

delivered to prospective purchasers, and any supplement thereto, to the commissioner within 10 days of the commissioner's request for the information. The exemption from qualification afforded by this subdivision is unavailable if an issuer fails to file the first notice required under subparagraph (A) or to pay the filing fee. The commissioner has the authority to assess an administrative penalty of up to one thousand dollars (\$1,000) against an issuer that fails to deliver the disclosure statement required to be delivered to the commissioner upon the commissioner's request within the time period set forth above. Neither the filing of the disclosure statement nor the failure by the commissioner to comment thereon precludes the commissioner from taking any action deemed necessary or appropriate under this division with respect to the offer and sale of the securities.

(e) An offer or sale of any security issued pursuant to a stock purchase plan or agreement, or issued pursuant to a stock option plan or agreement, where the security is exempt from registration under the Securities Act of 1933, as amended, pursuant to Rule 701 adopted pursuant to that act (17 C.F.R. 230.701), the provisions of which are hereby incorporated by reference into this section, provided that (1) the terms of any stock purchase plan or agreement shall comply with Sections 260.140.42, 260.140.45, and 260.140.46 of Title 10 of the California Code of Regulations, (2) the terms of any stock option plan or agreement shall comply with Sections 260.140.41, 260.140.45, and 260.140.46 of Title 10 of the California Code of Regulations, and (3) the issuer files a notice of transaction in accordance with rules adopted by the commissioner not later than 30 days after the initial issuance of any security under that plan, accompanied by a filing fee as prescribed by subdivision (y) of Section 25608.

(p) An offer or sale of nonredeemable securities to accredited investors (Section 28031) by a person licensed under the Capital Access Company Law (Division 3 commencing with Section 28000) of Title 4). All

~~1 nonredeemable securities shall be evidenced by
2 certificates that shall have stamped or printed
3 prominently on their face a legend in a form to be
4 prescribed by rule or order of the commissioner
5 restricting transfer of the securities in the manner as the
6 rule or order provides.~~

~~7 SEC. 23.~~

8 *SEC. 21.* Section 25117 of the Corporations Code is
9 amended to read:

10 25117. (a) An evidence of indebtedness, and the
11 purchasers or holders thereof, shall be exempt from the
12 usury provisions of Section 1 of Article XV of the
13 California Constitution if (1) the evidence of
14 indebtedness is rated or provisionally rated by Standard
15 & Poor's Corporation as AAA, AA, A, BBB, or investment
16 grade commercial paper, or by Moody's Investors
17 Service, Inc. as Aaa, Aa, A, Baa, or investment grade
18 commercial paper, including any such ratings with "+"
19 or "—" designation or other variations that occur within
20 these ratings, or has a rating or a provisional rating by
21 another nationally recognized rating agency or system,
22 which rating and agency or system have been certified by
23 rule or order of the commissioner, or (2) the issuer
24 thereof either (A) has any security listed or approved for
25 listing upon notice of issuance on a national securities
26 exchange or on the National Market System of the Nasdaq
27 Stock Market (or any successor to that entity), if the
28 exchange or Nasdaq Stock Market (or its successor) has
29 been certified by the commissioner, pursuant to
30 subdivision (o) of Section 25100, or (B) meets each of the
31 following requirements:

32 (i) The issuer is a corporation which is subject to
33 Section 13 of the Securities Exchange Act of 1934.

34 (ii) The issuer had total shareholders' equity of at least
35 one million dollars (\$1,000,000) at the end of its most
36 recent fiscal year, and had consolidated net income, after
37 all charges, including taxes and extraordinary losses, and
38 excluding extraordinary gains, of at least five hundred
39 thousand dollars (\$500,000) for three of its last four fiscal
40 years, including its most recent fiscal year. The

1 determination of total shareholders' equity and net
2 income shall be determined in conformity with generally
3 accepted accounting principles applicable to that fiscal
4 year or years, on a consolidated basis, or (3) the evidence
5 of indebtedness is issued by any corporation all of the
6 outstanding shares of which are owned by an issuer which
7 meets the requirements of subparagraph (A) or (B) of
8 paragraph (2).

9 (b) This section creates and authorizes a class of
10 transactions and persons pursuant to Section 1 of Article
11 XV of the California Constitution.

12 (c) Any evidence of indebtedness issued in
13 compliance with this section shall be entitled to the
14 benefits of the usury exemption contained in this section
15 regardless of whether subsequent to its issuance the
16 evidence of indebtedness is determined by a court of
17 competent jurisdiction to be a "security."

18 *SEC. 22. Section 11521.2 of the Insurance Code is*
19 *amended to read:*

20 11521.2. (a) The reserve required by the table of
21 commensurate values for each annuity contract issued
22 must be invested in investments specified in Sections 1170
23 through 1182 except that a certificate holder may invest
24 in securities listed and traded on the New York Stock
25 Exchange, the American Stock Exchange or regional
26 stock exchanges *or the National Market System of the*
27 *Nasdaq Stock Market* or successors to such exchanges *or*
28 *market* having the same qualifications, to the extent of
29 the lesser of net worth (assets over liabilities and
30 reserves) of the certificate holder or 10 percent of such
31 general investments. This section does not permit
32 investment in options or commodity exchanges.

33 (b) The certificate holder may invest in such other
34 investments as permitted by and subject to the written
35 consent of the commissioner.